

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JACOBY DONNER, P.C.,
Plaintiff,**

v.

**ARISTONE REALTY CAPITAL, LLC,
TODD M. LIPPIATT, and
PATRICK M. MCGRATH,
Defendants.**

CIVIL ACTION

NO. 17-2206

ORDER

AND NOW, this 27th day of August, 2020, upon consideration of Plaintiff's Motion to Exclude Expert Testimony Regarding Billing Practices (Document No. 154, filed December 10, 2018), Defendants Aristone Realty Capital, LLC, Todd M. Lippiatt and Patrick M. McGrath's Memorandum in Opposition to Jacoby Donner P.C.'s Motion to Exclude Expert Testimony Regarding Billing Practices (Document No. 166, filed January 4, 2019), Plaintiff's Reply Brief in Support of Motion to Exclude Expert Testimony Regarding Billing Practices (ECF No. 154) (Document No. 170, filed January 8, 2019), Counterclaim Defendant Jacoby Donner, P.C.'s *Daubert* Motion to Preclude Expert Report and Testimony of Proposed Legal Expert Peter W. Leibundgut, Esquire (Document No. 157, filed December 10, 2018), Memorandum in Support of Aristone Realty Capital, LLC, Todd M. Lippiatt and Patrick M. McGrath's Response to Counterclaim Defendant's Motion to Preclude Expert Report and Testimony of Proposed Legal Expert Peter W. Leibundgut, Esquire (Document No. 165, filed January 4, 2019), Counterclaim Defendant Jacoby Donner, P.C.'s *Daubert* Motion to Preclude Expert Report and Testimony of Proposed Valuation Expert John Agogliati, III, CFA, ASA (Document No. 156, filed December 10, 2018), Memorandum in Support of Aristone Realty Capital, LLC, Todd M. Lippiatt and Patrick M. McGrath's Response to Counterclaim Defendant's Motion to Preclude Expert Report

and Testimony of Proposed Valuation Expert John D. Agogliati, III, CFA, ASA (Document No. 164, filed January 4, 2019), Aristone Realty Capital, LLC, Todd M. Lippiatt and Patrick M. McGrath's Motion to Exclude Report and Testimony of James L. Griffith Under *Daubert v. Merrell Dow Pharms. Inc.* and FRE 702 and 403 (Document No. 160, filed December 11, 2018), Counterclaim Defendant Jacoby Donner P.C.'s Opposition to Defendants' Motion to Preclude Report and Testimony of James L. Griffith Under *Daubert v. Merrell Dow Pharams. [sic] Inc.* and FRE 702 and 403 (Document No. 162, filed January 3, 2019), Defendants Aristone Realty Capital, LLC, Todd M. Lippiatt and Patrick M. McGrath's Motion for Summary Judgment (Document No. 158, filed December 11, 2018), Jacoby Donner's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment (Document No. 163, filed January 4, 2019), Jacoby Donner's Motion for Partial Summary Judgment Against Defendant Aristone Realty Capital, LLC (Document No. 155, filed December 10, 2018), Aristone Realty Capital, LLC's Response to Plaintiff's Motion for Partial Summary Judgment (Document No. 175, filed January 25, 2019), Plaintiff's Reply Brief in Support of Plaintiff's Motion for Partial Summary Judgment Against Defendant Aristone Realty Capital, LLC (ECF No. 155) (Document No. 177, filed February 4, 2019), Defendants Aristone Realty Capital, LLC, Todd M. Lippiatt and Patrick M. McGrath's Surreply [sic] Memorandum in Further Opposition to Plaintiff Jacoby Donner, P.C.'s Motion for Partial Summary Judgment (Document No. 178, filed February 21, 2019), Plaintiff's Supplemental Brief in Support of Plaintiff's Motion for Partial Summary Judgment Against Defendant Aristone Realty Capital, LLC (Ecf No. 155) (Document No. 180, filed May 26, 2020), Plaintiff's Motion to Pierce the Corporate Veil (Document No. 153, filed December 10, 2018), Memorandum in Opposition to Plaintiff's Motion to Pierce the Corporate Veil (Document No. 161, filed December 24, 2018), Motion for Summary Judgment of Counterclaim

Defendant Jacoby Donner, P.C. (Document No. 152, filed December 7, 2018), Aristone Realty Capital, LLC, Todd M. Lippiatt and Patrick M. Mcgrath's Response to Motion for Summary Judgment of Counterclaim Defendant Jacoby Donner, P.C. (Document No. 168, filed January 7, 2019), and Reply in Further Support of Motion for Summary Judgment of Counterclaim Defendant Jacoby Donner, P.C. (Document No. 171, filed January 11, 2019), for the reasons stated in the accompanying Memorandum dated August 27, 2020, **IT IS ORDERED** as follows:

1. Plaintiff's Motion to Exclude Expert Testimony Regarding Billing Practices (Document No. 154) is **GRANTED IN PART AND DENIED IN PART**, as follows:
 - a. Plaintiff's Motion to Exclude Expert Testimony Regarding Billing Practices is **GRANTED** to the extent that it seeks to preclude Peter W. Leibundgut from testifying with respect to plaintiff's billing practices.
 - b. Plaintiff's Motion to Exclude Expert Testimony Regarding Billing Practices is **DENIED** in all other respects.
2. Counterclaim Defendant Jacoby Donner, P.C.'s *Daubert* Motion to Preclude Expert Report and Testimony of Proposed Legal Expert Peter W. Leibundgut, Esquire (Document No. 157) is **GRANTED**;
3. Counterclaim Defendant Jacoby Donner, P.C.'s *Daubert* Motion to Preclude Expert Report and Testimony of Proposed Valuation Expert John Agogliati, III, CFA, ASA (Document No. 156) is **GRANTED**;
4. Aristone Realty Capital, LLC, Todd M. Lippiatt and Patrick M. McGrath's Motion to Exclude Report and Testimony of James L. Griffith Under *Daubert v. Merrell Dow Pharms. Inc.* and FRE 702 and 403 (Document No. 160) is **GRANTED**;

5. Defendants Aristone Realty Capital, LLC, Todd M. Lippiatt and Patrick M. McGrath's Motion for Summary Judgment (Document No. 158) is **GRANTED IN PART AND DENIED IN PART**, as follows:

a. Defendants' Motion for Summary Judgment is **DENIED** with respect to Jacoby Donner's breach of contract claim (Count I of the Complaint).

b. Defendants' Motion for Summary Judgment is **GRANTED** with respect to Jacoby Donner's account stated claim (Count II of the Complaint) and unjust enrichment claim (Count III of the Complaint).

6. Jacoby Donner's Motion for Partial Summary Judgment Against Defendant Aristone Realty Capital, LLC (Document No. 155) is **DENIED**;

7. Plaintiff's Motion to Pierce the Corporate Veil (Document No. 153) is **DENIED**; and

8. Motion for Summary Judgment of Counterclaim Defendant Jacoby Donner, P.C. (Document No. 152) is **GRANTED**.

IT IS FURTHER ORDERED that a telephone conference for purposes of scheduling further proceedings will be conducted in due course.

BY THE COURT:

/s/ Hon. Jan E. DuBois

DuBOIS, JAN E., J.